

3 FAM 4320

DISCIPLINARY ACTION ³/₄ COMMON PRACTICES

3 FAM 4321 POLICY

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

Disciplinary procedures will be carried out in a fair, timely, and equitable manner.

3 FAM 4322 INVESTIGATION AND REPORTING OF INCIDENTS AND ALLEGATIONS

3 FAM 4322.1 Management Official

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

A supervisor or other management official who is aware of incidents or allegations which may serve as grounds for disciplinary action against an employee is responsible for taking action on, or reporting to the appropriate proposing official, such incidents or allegations.

3 FAM 4322.2 Chiefs of Mission

(TL:PER-338; 08/19/1997)

(State Only)

(Applies to Foreign Service Only)

Incidents or allegations which could serve as grounds for disciplinary action and/or criminal prosecution against a chief of mission (or official in a position of comparable importance) will immediately be referred to the OIG or the Bureau of Diplomatic Security, as appropriate, for investigation. In exceptional circumstances, the Under Secretary for Management may designate an individual or individuals to conduct the investigation.

3 FAM 4322.3 Administrative Inquiry

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. A management official who has personal knowledge or receives a report or allegation of conduct which could serve as grounds for disciplinary action and/or criminal prosecution must initially determine whether he/she or another management official should be the investigating official, or whether the matter should be referred to the OIG or Office of Security for further action. If the management official determines that the observed or alleged misconduct is relatively minor, such as leave abuse or failure to perform assigned duties, he/she or another management official may handle the administrative inquiry. If, however, the matter is more complex or serious (such as possible abuse of official position, possible ethical violations, or possible criminal conduct), the management official should refer the matter to the OIG or Office of Security, as appropriate, for further action. If the management official has doubts about how to proceed, he/she should contact the Office of Employee Relations in the Bureau of Personnel (PER/ER).

b. The OIG may receive allegations that employee conduct is in violation of laws, rules or regulations, or involves mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, and may conduct an administrative inquiry concerning the allegations.

c. The Office of Security may receive allegations that employee conduct raises suitability questions, involves unauthorized disclosure and compromise of classified and/or sensitive security information, or involves a violation of laws, rules or regulations within its jurisdiction, and may conduct an administrative inquiry concerning the allegations.

d. As a general rule, an investigating official should give the employee appropriate notice that an administrative inquiry has been opened, unless such notice might compromise the inquiry.

e. If an investigating official requests the employee to provide any personal information for inclusion in the report of administrative inquiry or other document containing the employee's name or other identifying factor (such as, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history), the Privacy Act of 1974 (5 U.S.C. 552a(e)(3)(A)-(D)) generally requires that the employee be informed in writing of:

- The authority which authorizes the solicitation of the information;
- Whether disclosure of such information is mandatory or voluntary;

- The principal purpose or purposes for which the information is intended to be used;
- The routine uses which may be made of the information; and
- The effects on him/her, if any, of not providing all or any part of the requested information.

NOTE: The OIG and/or the Office of Security may claim exemption from certain requirements of the Privacy Act for certain of their records under 22 CFR 171.32 to protect properly classified information and to assure the effective completion of the investigative and judicial process.

f. Questions about application of the Privacy Act should be directed to the Office of the Assistant Legal Adviser for Legislation and Management (L/LM).

g. The investigating official should inform the employee of his/her right to have a representative present during all personal interviews conducted with him/her as part of an administrative inquiry and that he/she may authorize a representative to act on his/her behalf. (see 3 FAM 4325)

h. If an employee who is to be personally interviewed is a member of a collective bargaining unit for which a union has exclusive representation rights, and the employee reasonably believes that the interview may result in disciplinary action against him/her, the investigating official shall give the employee the opportunity to be represented by the exclusive representative if the employee so requests. This right is known as the Weingarten right. When an employee invokes the Weingarten right, the investigating official will allow a reasonable period of time for a union representative to attend the interview.

i. If an employee is interviewed concerning matters for which he/she could be criminally prosecuted, the investigating official will inform the employee of the employee's rights under federal law.

3 FAM 4323 EXCLUSION FROM PREMISES/CURTAILMENT

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. At any time during processing under 3 FAM 4300 , a management official, the proposing official or the deciding official may decide to exclude the employee from all or a part of the official premises because the employee's continued presence in the workplace may pose a threat to the employee or to others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests.

b. Subject to 3 FAM 4362 , if the employee is excluded from all or part of the official premises, he/she will be removed from duty status and placed on nonduty status with pay (or if he/she requests, annual or sick leave for which he/she qualifies) unless the agency chooses to assign the employee work in an appropriate restricted work location, either in the employee's regular position or by assignment or detail to other duties.

c. An employee who is excluded from all or part of the official premises, removed from duty status, placed on nonduty status with pay, and/or assigned to work in a restricted work location, will be so notified in writing. When any of these actions is taken, the agency will proceed with the processing of disciplinary action on an expedited basis.

d. At any time during processing under 3 FAM 4300 , an employee's assignment may be curtailed in accordance with 3 FAM 2440 . Involuntary curtailment is an assignment and not a disciplinary action, and is not to be used as a substitute for disciplinary action.

3 FAM 4324 ACTION AFTER ADMINISTRATIVE INQUIRY

3 FAM 4324.1 Administrative Inquiry Conducted by Management Official

3 FAM 4324.1-1 Options

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

After an administrative inquiry conducted by a management official, that official or another appropriate management official shall carefully consider the evidence, including any mitigating factors, and decide whether to:

- Close the case,
- Admonish the employee, or
- Recommend to the appropriate personnel official that disciplinary action be taken.

3 FAM 4324.1-2 Case Closure

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

- a. If the management official decides to close the case, he/she will retain the documents relating to the administrative inquiry under appropriate safeguards for one year, and then will destroy them.
- b. If the employee has been notified that an administrative inquiry has been opened, the management official will notify the employee of the decision to close the case in a timely manner.

3 FAM 4324.1-3 Decision to Admonish

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

If the management official decides to admonish the employee, he/she shall maintain all documents relating to such action as provided in 3 FAM 4332 .

3 FAM 4324.1-4 Recommendation for Disciplinary Action

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

- a. If the management official recommends disciplinary action, the management official will prepare a report of the administrative inquiry which includes:
 - Details of the administrative inquiry;
 - Relevant Documents;
 - The reasons for deciding to recommend disciplinary action.
- b. The management official shall transmit the report of the administrative inquiry to the appropriate proposing official as described in 3 FAM 4341 , 3 FAM 4351 , or 3 FAM 4362.1 . If the management official is abroad, he/she shall transmit a summary of the administrative inquiry and recommendation by an appropriate restricted personnel telegraphic channel and shall pouch the full report and supporting documents to the proposing official.

3 FAM 4324.2 Administrative Inquiry by OIG or Office of Security

3 FAM 4324.2-1 Options

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

The OIG or Office of Security may recommend that appropriate administrative action be taken against an employee, based on an administrative inquiry conducted by the OIG or Office of Security.

3 FAM 4324.2-2 Transmission of Report of Investigation

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

When recommending appropriate administrative action against an employee based on an administrative inquiry, the OIG or Office of Security should forward the report of investigation as follows:

Agency	Forward to
State	Director General of the Foreign Service
USAID	Director, Office of Human Resources (M/HR/OD)
USIA	Director, Office of Human Resources (M/HR) or Director, Office of Personnel and Administration (B/PA)
Agriculture	Foreign Agriculture Service, Compliance Review Staff APHIS, Deputy Administrator, International Services
Commerce	Director General or equivalent official or designee

3 FAM 4324.3 Action by Proposing Official

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

- a. Before proposing disciplinary action, the proposing official will review any prior similar cases within the agency, in order to foster equity and consistency in the imposition of discipline.
- b. In addition, the proposing official should consult the table of offenses and penalties in 3 FAM 4377 for guidance.

3 FAM 4324.4 Report of Administrative Inquiry or Investigation Not Kept in Performance File

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

All documents related to an administrative inquiry shall be kept separate from the employee's Performance File, except for the placement of a decision letter in the Performance File, as provided in 3 FAM 4345 c, 3 FAM 4355 c, or 3 FAM 4368 d , or any notation made under 3 FAM 4326 c .

3 FAM 4325 REPRESENTATION

3 FAM 4325.1 Employees in A Recognized Bargaining Unit

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. An employee who is a member of a collective bargaining unit for which a union has exclusive representation rights may request representation by the exclusive representative during any administrative inquiry which the employee reasonably believes may result in disciplinary action and in subsequent processing under 3 FAM 4300 . In such cases, the exclusive representative will be given a reasonable opportunity to attend any interview with the employee.

b. Subject to 3 FAM 4325.3 , a bargaining unit employee may also be represented by an attorney or any other representative of his/her own choosing.

3 FAM 4325.2 Employees Not in a Bargaining Unit

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

Subject to 3 FAM 4325.3 , an employee who is not in a collective bargaining unit for which a union has exclusive representation rights, is entitled to be represented by an attorney or other representative of his/her choosing during any administrative inquiry which may result in disciplinary action and in subsequent processing under 3 FAM 4300 .

3 FAM 4325.3 Restrictions on Representatives

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

- a. The agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.
- b. Any representative who has not received an appropriate security clearance may not receive classified information or be present when classified information is presented or heard, at any stage of disciplinary proceedings. The agency will use its best endeavors to expedite the processing of a security clearance for a representative when necessary to ensure a fair hearing on a proposal for disciplinary action.
- c. If a representative is disallowed or denied a necessary security clearance, the agency shall notify the employee in writing, and provide the employee reasonable time to secure another representative. In the case of disallowance, the written notice shall fully state the reason for disallowance.

3 FAM 4326 RESIGNATION OR RETIREMENT

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

- a. An employee may submit his/her resignation or submit an application for retirement while a disciplinary action is being processed under 3 FAM 4300 . Prior to the effective date of any resignation or retirement, the agency will notify the employee of any notation required under 3 FAM 4326 c .
- b. The agency may decide whether to approve a retirement applied for under 3 FAM 4326 a .
- c. If the employee resigns or retires after receiving notice that disciplinary action has been proposed or decided, the Notification of Personnel Action (SF-50 for State, USIA, Agriculture, Commerce, and USAID) shall contain a notation to that effect. The deciding official may waive this requirement upon request of the employee, or pursuant to a settlement agreement between the agency and the employee, if the deciding official considers the reason for proposed or decided disciplinary action is not a significant factor for other employers to consider.

3 FAM 4327 DEATH OR DISABILITY OF EMPLOYEE

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

If an employee dies or is separated for disability before a decision on a proposed disciplinary action is effected, the agency shall cancel such proposed action.

3 FAM 4328 GRIEVANCE AND OTHER RIGHTS

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

- a. Nothing in 3 FAM 4300 precludes an employee from exercising any right provided by statute or regulation.
- b. An employee may grieve a disciplinary action and may request the suspension of any disciplinary action during the pendency of a grievance pursuant to Chapter 11 of the Act and 3 FAM 4400 , Foreign Service Grievance System. The Board's final decision will be binding, except for any right to judicial review provided by law.
- c. An agency or an employee aggrieved by a final decision of the Foreign Service Grievance Board may obtain judicial review thereof under Section 1110 of the Act.

3 FAM 4329 LIMITATIONS ON USE OF DISCIPLINARY ACTION

(TL:PER-338; 08/19/1997)

(Uniform State/USAID/USIA/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

- a. Policy differences voiced through the Dissent Channel (see section 105(b)(3) of the Act and 2 FAM 041) are not grounds for disciplinary action, for curtailment of a tour of duty under 3 FAM 2440 , or for a decision to exclude an employee from all or part of the official premises under 3 FAM 4323 .
- b. Whistleblower protections extend to any employee who makes disclosures within or without the U.S. Government of what he/she reasonably believes to be a violation of any law, rule, or regulation; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health and safety. A disciplinary action or other personnel action

intended to punish an employee for whistleblowing may be investigated by the OIG or the Office of Special Counsel as a reprisal, a prohibited personnel practice under 5 U.S.C. 2302(b)(8)(A) and (B). A supervisor or other employee who is found to have committed a reprisal is subject to serious sanctions, including, but not limited to, removal, reduction in grade, and debarment from Federal employment.

